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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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GAIL HAHN, individually and on  
behalf of all other similarly situated  
California residents,

Plaintiff,

v.

MASSAGE ENVY FRANCHISING,  
LLC, a Delaware limited liability  
company;

Defendants.

Case No. 12cv153-DMS (BGS)

**ORDER GRANTING AMENDMENT  
TO PROTECTIVE ORDER**

1       The parties Gail Hahn (“Plaintiff”) and Defendant Massage Envy  
2 Franchising, LLC (“MEF”) have agreed and stipulated to be bound by the terms of  
3 this Amendment to the Protective Order (the “Amendment”), entered on September  
4 20, 2013, in this action. *See Doc. 57.*

5       The Materials<sup>1</sup> to be produced by MEF in conjunction with the parties’  
6 expert discovery contains information and raw data from MEF’s proprietary and  
7 enhanced Millennium Software Database that MEF asserts includes trade secret,  
8 personal, private, and other confidential research, technical information, cost, price,  
9 marketing, and/or other proprietary commercial information as is contemplated by  
10 Federal Rule of Civil Procedure 26(c)(7) (the “Millennium Raw Data”). The  
11 purpose of this Amendment is to protect the confidentiality of the Millennium Raw  
12 Data as much as practicably possible during the litigation. THEREFORE:

13       1.      The parties agree that MEF shall produce the Millennium Raw Data  
14 subject to the Protective Order and this Amendment as “CONFIDENTIAL –  
15 EXPERT EYES ONLY.”

16       2.      The parties agree that MEF shall produce the Millennium Raw Data  
17 only to Plaintiff’s February 8, 2014, disclosed Expert – Jeff A. Hansen (“Mr.  
18 Hansen”) -pursuant to the terms and conditions set forth herein.

19       3.      The parties agree that before MEF has any obligation to produce the  
20 Millennium Raw Data to Mr. Hansen, the Mr. Hansen shall read this Amendment  
21 and agree in writing to be bound by its terms by executing Exhibit A to this  
22 Amendment. On October 3, 2013, Mr. Hansen previously agreed to be bound to the  
23 Protective Order. Before Mr. Hansen may disclose any portion of Millennium Raw  
24 Data to Mr. Thomas M. Neches (Plaintiff’s disclosed financial expert, “Mr.  
25 Neches”) consistent with the terms set forth herein, Mr. Neches shall read this

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26       <sup>1</sup> The Definitions set forth in the Protective Order [Doc. 57] shall apply equally to  
27 this Amendment.

1 Amendment and agree in writing to be bound by its terms by executing Exhibit A  
2 to this Amendment.

3       4. Mr. Hansen shall agree to retain and maintain the Millennium Raw  
4 Data exclusively in his custody and control in the manner set forth in this  
5 Amendment and, in any event, shall agree that the Millennium Raw Data must not  
6 be used for any purpose other than in connection with this litigation unless and until  
7 the “CONFIDENTIAL –EXPERT EYES ONLY” designation is removed either by  
8 written agreement of the parties or by order of the Court.

9       5. The Mr. Hansen shall agree not to disclose to, or otherwise share with,  
10 Plaintiff, her counsel, proposed Intervenors Alexis Hernandez and Chaille Duncan,  
11 any putative class member, or any other person the Millennium Raw Data otherwise  
12 as specified herein. In particular, Mr. Hansen shall not disclose or otherwise share  
13 any information which may be extracted from the Millennium Raw Data that may  
14 reveal (a) the identity of any putative class member, member, guest, or employee of  
15 a franchise located in the state of California (“California Franchisee”); (b) the  
16 contact information of any putative class member, member, guest, or employee of a  
17 California Franchisee (i.e., address, telephone number, email address); and/or (c)  
18 any information that may be contained in any “note” or “notes” field in the  
19 Millennium Raw Data.

20       6. The parties acknowledge that the Millennium Raw Data may include  
21 information and data that is not related to any member or guest of a California  
22 Franchisee since December 2007. For instance, the Millennium Raw Data may  
23 include information concerning members, guests, and employees of Massage Envy  
24 franchises located outside the state of California and prior to December 2007. This  
25 information shall be collectively referred to as the “Non-California Member  
26 Millennium Information.”

27       7. The parties agree that by MEF producing Non-California Member  
28 Millennium Information to Mr. Hansen as part of the Millennium Raw Data, MEF

1 is not agreeing that this information is relevant to any issue in this case; nor is MEF  
2 agreeing that this information is responsive to any discovery request in this case;  
3 nor is MEF waiving its right to object to the use or analysis of this information and  
4 expressly reserves the right to do so. Instead, the parties agree that the Millennium  
5 Raw Data is being produced to Mr. Hansen in the interest of providing Mr. Hansen  
6 with information and data related to a member or guest of a California Franchisee  
7 since December 2007 (“California Member Franchisee Data”) in the most cost  
8 effective and efficient manner and that this necessarily includes producing Non-  
9 California Member Millennium Information.

10       8.     Mr. Hansen shall further agree not to disclose to or otherwise share  
11 with Plaintiff, her counsel, proposed Intervenors Alexis Hernandez and Chaille  
12 Duncan, any putative class member, or any other person any Non-California  
13 Member Millennium Information.

14       9.     The parties agree that the Mr. Hansen is being provided the  
15 Millennium Raw Data for the purpose of allowing Mr. Neches to perform  
16 quantitative and qualitative analysis of only the California Member Franchisee Data  
17 and not for use or analysis of the Non-California Member Millennium Information  
18 or any information that may be included in or extracted from the Millennium Raw  
19 Data that does not pertain to any member or guest of a California Franchisee or  
20 MEF’s (or its franchisees) California business operations since December 2007.  
21 However, if after Mr. Neches’ review of the California Member Franchisee Data in  
22 accordance with paragraph ten (10) *infra*, Mr. Neches concludes that his analysis  
23 cannot be made using only California Member Franchisee Data, the parties agree  
24 that Plaintiff may make an application to the Court based on a showing of good  
25 cause why the use of Non-California Member Millennium Information is necessary  
26 to provide expert analysis. The parties acknowledge that if MEF’s disclosed expert  
27 Carl. L. Sheeler, Ph.D., ASA, CBA, CVA (“Mr. Sheeler”) relies on Non-California  
28 Member Millennium Information in any expert report or opinion, Mr. Neches may

1 receive from Mr. Hansen the same Non-California Member Millennium  
2 Information to respond to Mr. Sheeler's analysis.

3       10. The parties agree that Mr. Hansen may only disclose California  
4 Member Franchisee Data to Mr. Nechesas "CONFIDENTIAL – OUTSIDE  
5 COUNSEL AND EXPERT ONLY" pursuant to the Protective Order, and Mr.  
6 Hansen and Mr. Neches may disclose any qualitative or quantitative analysis of  
7 their work to Plaintiff's counsel, provided such disclosure to Mr. Neches or  
8 Plaintiff's counsel does not include information that reveals (a) the identity of a  
9 class member, member, guest, or employee of a California Franchisee (other than a  
10 member ID number); (b) the contact information of any putative class member,  
11 member, guest, or employee of a California Franchisee (i.e., address, telephone  
12 number, email address); and/or (c) any information contained in any "note" or  
13 "notes" field in the Millennium Raw Data.

14       11. The parties agree that before any analysis of any portion of the  
15 California Member Franchisee Data, any information or analysis that has been  
16 designated as "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY"  
17 pursuant to the Protective Order, including deposition testimony as provided in  
18 Paragraph 12, *infra*, or any summary of any such information may be filed with the  
19 Court by Plaintiff for any purpose, in sufficient advance of any such filing, Plaintiff  
20 must seek permission of the Court to file such data or information under seal. Any  
21 request to file such Millennium Raw Data and analysis under seal must comply  
22 with Civil Local Rule 79.2 and this Amendment. If Plaintiff fails to comply with  
23 Civil Local Rule 79.2 and this Amendment, MEF shall have the opportunity to file  
24 a motion to seal with the Court in compliance with Civil Local Rule 79.2 and this  
25 Amendment.

26       12. No portion of the Millennium Raw Data may be used as an exhibit at  
27 any deposition in this matter, absent the parties' prior written agreement or order of  
28 the Court.

1           13. Whenever a deposition taken on behalf of any party in this lawsuit  
2 involves a disclosure of any information or analysis that has been made of the  
3 California Member Franchisee Data or any information or analysis that has been  
4 designated as “CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY”  
5 pursuant to the Protective Order and/or any summary of any such information:

6                 (a) The deposition or portions of the deposition must be designated  
7 as containing “CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY”  
8 subject to the provisions of this Amendment and the Protective Order and any court  
9 reporter having access to any such information or testimony must agree to be bound  
10 by the Protective Order and this Amendment.

11                 (b) MEF will have the right to exclude from attendance at the  
12 deposition, only during such time as “CONFIDENTIAL – OUTSIDE COUNSEL  
13 AND EXPERT ONLY” designated Confidential Information is to be disclosed, any  
14 person including, but not limited to, Plaintiff and any putative class member, other  
15 than the deponent and other than those individuals permitted access under the  
16 Protective Order and this Amendment and the court reporter; and

17                 (c) The originals of the deposition transcripts and all copies of the  
18 deposition must bear the legend “CONFIDENTIAL – OUTSIDE COUNSEL AND  
19 EXPERT ONLY” as appropriate, and the original or any copy ultimately presented  
20 to a Court for filing must not be filed unless it can be accomplished under seal,  
21 identified as being subject to the Protective Order and this Amendment and  
22 protected from being opened except by order of this Court, unless the Court refuses  
23 to file such transcripts or any portion of such transcripts under seal following a  
24 request to do so.

25           14. An application by Plaintiff for her, her counsel, or anyone other than  
26 the Mr. Hansen or Mr. Neches to have access to or to review any portion of the  
27 Millennium Raw Data or information designated as “CONFIDENTIAL – EXPERT  
28 EYES ONLY” shall be served on MEF. If MEF wishes to oppose the application,

1 MEF must contact the chambers of the judge who will rule on the application to  
2 notify the judge's staff that an opposition to the application will be filed. If access  
3 to any portion of the Millennium Raw Data or information designated as  
4 "CONFIDENTIAL –EXPERT EYES ONLY" is granted to anyone other than the  
5 Mr. Hansen or Mr. Neches, any such person shall agree to be bound to the  
6 Protective Order and this Amendment in the same manner as the Mr. Hansen or Mr.  
7 Neches.

8       15. No analysis of, or any portion of the California Member Franchisee  
9 Data, any information or analysis that has been designated as "CONFIDENTIAL –  
10 OUTSIDE COUNSEL AND EXPERT EYES ONLY" (or information designated  
11 as "CONFIDENTIAL – EXPERT EYES ONLY") pursuant to the Protective Order,  
12 or any summary of any such information shall be filed under seal unless counsel  
13 secures a court order allowing the filing of a document under seal. An application  
14 by Plaintiff to file any analysis of, or any portion of the California Member  
15 Franchisee Data, any information or analysis that has been designated as  
16 "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT EYES ONLY" (or  
17 information designated as "CONFIDENTIAL – EXPERT EYES ONLY") pursuant  
18 to the Protective Order, or any summary of any such information with the Court  
19 under seal shall be served on MEF. If MEF wishes to oppose the application, MEF  
20 must contact the chambers of the judge who will rule on the application, to notify  
21 the judge's staff that an opposition to the application will be filed. If any application  
22 to file any such information under seal is granted by the judge, a redacted version of  
23 any portion of the document shall be e-filed. A courtesy copy of the unredacted  
24 document shall be delivered to the appropriate judge's chambers.

25       16. Nothing in this Amendment shall limit MEF's use and/or disclosure of  
26 the Millennium Raw Data, information designated as "CONFIDENTIAL – IT  
27 EXPERT ONLY," information designated as "CONFIDENTIAL – OUTSIDE  
28 COUNSEL AND EXPERT ONLY," or any portion of any deposition transcript

1 designated as “CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT  
2 ONLY.”

3       17. All Millennium Raw Data, any analysis of any portion of the  
4 California Member Franchisee Data, any information or analysis that has been  
5 designated as “CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY”  
6 (or designated as “CONFIDENTIAL –EXPERT EYES ONLY”) pursuant to the  
7 Protective Order, or any summary of any such information shall be held in  
8 confidence by those authorized by this Amendment to the Protective Order to  
9 inspect or receive it and must be used only for purposes of this action.

10       18. The Mr. Hansen and Mr. Nechoes shall take reasonable precautions to  
11 prevent the unauthorized or inadvertent disclosure of the Millennium Raw Data or  
12 any other information designated as “CONFIDENTIAL –EXPERT EYES ONLY.”  
13 If the Millennium Raw Data or any other information designated as  
14 “CONFIDENTIAL – IT EXPERT ONLY” is disclosed to any person other than the  
15 Mr. Hansen and Mr. Nechoes, Mr. Hansen or Mr. Nechoes must immediately bring all  
16 pertinent facts relating to the unauthorized disclosure to the attention of counsel for  
17 MEF and counsel for Plaintiff and, without prejudice to any rights and remedies  
18 that MEF may have, make every effort to prevent further disclosure by the party  
19 and by the person(s) receiving the unauthorized disclosure.

20       19. Counsel of Record for Plaintiff and each person receiving any analysis  
21 of any portion of the California Member Franchisee Data, any information or  
22 analysis that has been designated as “CONFIDENTIAL – OUTSIDE COUNSEL  
23 AND EXPERT ONLY” (or designated as “CONFIDENTIAL –EXPERT EYES  
24 ONLY”) pursuant to the Protective Order, or any summary of any such information  
25 must take reasonable precautions to prevent the unauthorized or inadvertent  
26 disclosure of any and all such information. If any such information is disclosed to  
27 any person other than a person authorized by this Amendment or the Protective  
28 Order, the party responsible for the unauthorized disclosure must immediately bring

1 all pertinent facts relating to the unauthorized disclosure to the attention of MEF's  
2 counsel in writing and, without prejudice to any rights and remedies that MEF may  
3 have, make every effort to prevent further disclosure by the party and by the  
4 person(s) receiving the unauthorized disclosure.

5       20. This Order will be without prejudice to the right of any party to oppose  
6 production of any Confidential Information designated **CONFIDENTIAL –**  
7 **EXPERT EYES ONLY** for lack of relevance or any other ground other than the  
8 mere presence of Confidential Information. The existence of this Amendment must  
9 not be used by either party as a basis for discovery that is otherwise improper under  
10 the Federal Rules of Civil Procedure.

11       21. Nothing within this Amendment will be construed to prevent  
12 disclosure of the Millennium Raw Data, any portion of the California Member  
13 Franchisee Data, any information or analysis that has been designated as  
14 "**CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY**" (or  
15 designated as "**CONFIDENTIAL –EXPERT EYES ONLY**") pursuant to the  
16 Protective Order, or any summary of any such information if such disclosure is  
17 required by law or by order of the Court.

18       22. Final Disposition. Unless otherwise agreed by the parties in writing,  
19 within sixty (60) days after the Final Disposition of this action, as defined below,  
20 the Mr. Hansen and Mr. Neches shall permanently delete all copies of the  
21 Millennium Raw Data, the California Member Franchisee Data including all  
22 metadata, any information or analysis that has been designated as  
23 "**CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY**" (or  
24 designated as "**CONFIDENTIAL –EXPERT EYES ONLY**") pursuant to the  
25 Protective Order, or any summary of any such information and any copies thereof  
26 including electronic or otherwise from all electronic storage mediums (including  
27 but not limited hard drives and portable storage devices). Unless otherwise agreed  
28 by the parties in writing, within sixty (60) days after the Final Disposition of this

1 action, as defined below, Plaintiff's Counsel and anyone else who has had access to  
2 the California Member Franchisee Data, any information or analysis that has been  
3 designated as "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY"  
4 pursuant to the Protective Order, or any summary of any such information pursuant  
5 to this Amendment shall destroy any and all copies thereof. It is MEF's  
6 responsibility to ensure that the Mr. Hansen and Mr. Neches, Plaintiff's Counsel,  
7 and anyone else who has had access to the information designated as  
8 "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY" pursuant to  
9 the Protective Order or any summary of any such information pursuant to this  
10 Amendment shall also take steps to destroy by permanently deleting all electronic  
11 copies of such documents or records, as well as all metadata relating thereto.  
12 Counsel for Plaintiff must submit a written certification to Counsel for MEF by the  
13 60-day deadline that affirms that Plaintiff's Counsel, Plaintiff, and/or anyone else  
14 within Plaintiff's control who has had access to any information designated as  
15 'CONFIDENTIAL –EXPERT EYES ONLY' or "CONFIDENTIAL – OUTSIDE  
16 COUNSEL AND EXPERT ONLY" pursuant to the Protective Order or any  
17 summary of any such information pursuant to this Amendment has not retained any  
18 such information. Notwithstanding this provision, and unless otherwise agreed by  
19 the parties in writing, Counsel are entitled to retain an archival copy of all  
20 pleadings, motion papers, trial, deposition and hearing transcripts, legal  
21 memoranda, correspondence, deposition and trial exhibits, and expert reports, even  
22 if such Materials contain information that has been designated as  
23 "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY." Any such  
24 archival copies that contain or constitute information marked "CONFIDENTIAL –  
25 OUTSIDE COUNSEL AND EXPERT ONLY" remain subject to this Amendment  
26 and the Protective Order as set forth herein. UNDER NO CIRCUMSTANCES  
27 SHALL ANY PORTION OF THE MILLENIUM RAW DATA OR ANY  
28 INFORMATION DESIGNATED AS "CONFIDENTIAL –EXPERT EYES

1 ONLY" OR ANY COPY OF THE SAME BE RETAINED BY ANYONE. Even  
2 after Final Disposition of this litigation, the confidentiality obligations imposed by  
3 this Amendment and the Protective Order will remain in effect until MEF agrees  
4 otherwise in writing or a court otherwise directs. "Final Disposition" means the  
5 later of (1) dismissal of all claims and defenses in this action, with or without  
6 prejudice, and (2) final judgment in this action after the completion and exhaustion  
7 of all appeals, rehearings, remands, trials, or reviews of this action, including the  
8 time limits for filing any motions or applications for extension of time pursuant to  
9 applicable law.

10       23. Also within sixty (60) days after the Final Disposition of this action,  
11 Counsel for MEF may file an ex parte motion for an order requesting that the Court  
12 either destroy any information or analysis that has been designated as  
13 "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY" (or  
14 designated as "CONFIDENTIAL – EXPERT EYES ONLY") pursuant to the  
15 Protective Order or any summary of any such information on file or authorizing the  
16 return of any and all such information to MEF or its destruction.

17       24. The restrictions and obligations set forth within this Amendment will  
18 not apply to any portion of the Millennium Raw Data, any portion of the California  
19 Member Franchisee Data, any information or analysis that has been designated as  
20 "CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY" (or  
21 designated as "CONFIDENTIAL – EXPERT EYES ONLY") pursuant to the  
22 Protective Order or any summary of any such information that: (a) the parties  
23 mutually agree in writing should not be subject to this Amendment; (b) the parties  
24 mutually agree in writing or the Court rules is already public knowledge; (c) the  
25 parties mutually agree in writing or the Court rules has become public knowledge  
26 other than as a result of disclosure by the receiving party, its employees, or its  
27 agents in violation of this Amendment; or (d) the parties mutually agree in writing  
28 or the Court rules that any such information has come or will come into Plaintiff's

1 legitimate knowledge independently of the production by MEF.

2       25. Transmission by facsimile or email is acceptable for all notification  
3 purposes within this Amendment.

4       26. This Amendment may be modified by written agreement of the parties,  
5 subject to approval by the Court.

6       27. This Amendment does not and is not intended to change, amend, or  
7 circumvent any rule of this Court or any Local Rule.

8       28. The Court may modify the terms and conditions of this Amendment  
9 for good cause or in the interest of justice or on its own order at any time in these  
10 proceedings. The parties prefer that the Court provide them with notice of the  
11 Court's intent to modify the Amendment and the content of those modifications  
12 prior to entry of such an order.

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1        29. Even after the termination of this action, the confidentiality and other  
2 obligations imposed by this Amendment will remain in effect until the producing  
3 party agrees otherwise in writing or the Court otherwise directs. The parties may  
4 request that any Final Disposition of this action as to any or all parties will include  
5 a specific provision that the Court will retain jurisdiction to enforce the terms of  
6 this Amendment for a period of two (2) years following such Final Disposition  
7 unless otherwise ordered by the Court. The parties, counsel, and any individual who  
8 receives the Millennium Raw Data, any portion of the Millennium Raw Data, the  
9 California Member Franchisee Data, any information or analysis that has been  
10 designated as “CONFIDENTIAL – OUTSIDE COUNSEL AND EXPERT ONLY”  
11 (or designated as “CONFIDENTIAL – EXPERT EYES ONLY”) pursuant to the  
12 Protective Order, or any summary of any such information and any copies of any  
13 such information in accordance with this Amendment and the Protective Order  
14 consents to the personal jurisdiction of the Court for that purpose.

15 IT IS SO ORDERED this 6 day of March, 2014.

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## The Honorable Magistrate Judge Bernard Skomal

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3                   **EXHIBIT A**  
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10                   UNITED STATES DISTRICT COURT  
11                   SOUTHERN DISTRICT OF CALIFORNIA

12                   GAIL HAHN, individually and on  
13                   behalf of all other similarly situated  
14                   California residents,

15                   Plaintiff,

16                   v.  
17                   MASSAGE ENVY FRANCHISING,  
18                   LLC, a Delaware limited liability  
19                   company;

20                   Defendants.

21                   Case No. 12cv153-DMS (BGS)

22                   **AGREEMENT TO ABIDE BY  
23                   AMENDMENT TO PROTECTIVE  
24                   ORDER**

25                   The Hon. Dana M. Sabraw

26                   I, \_\_\_\_\_, declare and say that:

27                   1. I am employed as \_\_\_\_\_  
28                   by \_\_\_\_\_.  
29

30                   2. I have received and read a copy of the Amendment to the Protective  
31                   Order entered in *Hahn v. Massage Envy Franchising, LLC*, Case No. 12cv153-  
32                   DMS (BGS), and understand and agree to abide by its terms.  
33

1       3. I agree to keep confidential all Millennium Raw Data and other  
2 Confidential Information provided to me in this matter in accordance with the  
3 restrictions in the Amendment to the Protective Order.

4       4. I acknowledge that, by signing this agreement, I am subjecting myself  
5 to the jurisdiction of the United States District Court for the Southern District of  
6 California with respect to enforcement of the Amendment to the Protective Order.

7       5. I understand that any disclosure or use of Confidential Information in  
8 any manner contrary to the provisions of the Amendment to the Protective Order  
9 may subject me to sanctions for contempt of court.

10      6. I declare under penalty of perjury that the foregoing is true and correct.  
11

12      Dated: \_\_\_\_\_